

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:
SOS Metals, Inc.

201 E. Gardena Boulevard
Gardena, California 90248

635 Anita Street
Chula Vista, California 91911

EPA ID#'s CAR 000 11 1 567
 CAL 000 160 847

Respondent:

Docket Nos.
HWCA 2003 0273
HWCA 2003 0288

CONSENT ORDER

Health and Safety Code
Section 25187

The California Department of Toxic Substances Control (Department) and
SOS Metals, Inc. (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste at and transports hazardous
waste from its locations at 201 East Gardena Boulevard, Gardena, California, 90248
(Gardena Site) and at 635 Anita Street, Chula Vista, California 9191 1 (Chula Vista
Site).

2. The Department inspected the Gardena Site on April 17,18, and 25,
2002 and the Chula Vista Site on May 15 and 16, 2002.

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3. The Department alleges the following violations:

3.1, Respondent violated Health and Safety Code section 25201, in that on April 17, 2002, Respondent accepted and stored off-site generated hazardous waste without authorization from the Department and exceeding the allowed storage time limit. (Gardena Site and Chula Vista Site.)

3.2. Respondent violated Health and Safety Code, section 25160 (d)(1), in that on April 17, 2002, Respondent transported hazardous waste without manifest. (Gardena only.)

3.3 Respondent violated Health and Safety Code, section 25201, in that on April 17, 2002, Respondent transported hazardous waste to an unauthorized location. (Gardena only.)

4. A dispute exists regarding the alleged violations.

5. By entering this Consent Order, Respondent makes no admission of liability. Respondent further contends as follows:

5.1. The Gardena Site: SOS Metals follows stringent pre-acceptance procedures before accepting any material onto its premises. Of the dozens of containers present at SOS Metals' Gardena Site during the DTSC inspection, only a handful contained metal covered with more than a de minimis amount of oil. SOS Metals has taken significant steps to ensure that future containers will not be contaminated with used oil. SOS Metals has either terminated its relationships with oily grinding generators, or it has arranged for any oil from the industrial generator to be centrifuged at the generator's location. SOS Metals contends that all metal grinding

residue processed is recyclable scrap metal under, California Code of Regulations, title 22, sections 66260.10 and 66261.6, and Health and Safety Code section 25143.2 and that SOS Metal does not treat the material on-site. SOS Metals contends that: a) metal grindings are a commodity that serves a useful commercial purpose when recycled; and b) that it transports its metal grindings to a licensed consolidator, which in turn submits all material to a primary ore processor and smelter. SOS Metals' contends that its activities pose no threat to public safety or the environment and that its activities' actually promote the strong California public policy favoring recycling.

5.2. The Chula Vista Site: SOS Metals follows stringent pre-acceptance procedures before accepting any material onto its premises. Certain barrels found on SOS Metals' Site during the inspection contained fine powder metal grindings. These metal grindings are recyclable material under California Code of Regulations, title 22, section 66261.6 and Health and Safety Code section 25143.2. While fine metal grindings are not considered "scrap metals," they may nonetheless be considered recyclable material if all the requirements under Health and Safety Code section 25143.2, subdivision (b), are satisfied. SOS Metals contends that: a) metal grindings are a commodity that serves a useful commercial purpose when recycled; and b) that it transports its metal grindings to a licensed consolidator, which in turn submits all material to a primary ore processor and smelter. SOS Metals' contends that its activities pose no threat to public safety or the environment. At no time are fine metal grindings discharged into the air, and the material is not treated on-site. SOS Metals' contends that its activities promote the strong California public policy favoring recycling.

6. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

7. Jurisdiction exists pursuant to Health and Safety Code section 25187.

8. Respondent waives any right to a hearing in this matter.

9. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations; the Department has no present knowledge of other violations.

SCHEDULE 'FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1 .1. Effective immediately, Respondent shall not receive or accept any off-site hazardous waste at either the Gardena Site or the Chula Vista Site without authorization by the Department.

10.1.2 Effective immediately, Respondent shall use a manifest to transport hazardous waste.

10.1.3. Effective immediately, Respondent shall transport hazardous waste only to a location authorized to handle hazardous waste.

10.1.4. Effective immediately, Respondent shall not store on-site generated hazardous waste at either the Gardena Site or the Chula Vista Site for more than 90 days.

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10.1.5. Effective immediately, Respondent, I shall not transport or receive metal grindings unless such metal grindings have been centrifuged such that they do not contain more than de minimis quantities of oil.

10.1.6. Effective upon final execution of this Consent Order, and for a period thereafter of not less than five years, Respondent shall maintain this Order as part of its operating record at both the Gardena and Chula Vista Sites.

10.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substance Control
1011 North Grandview Avenue
Glendale, California, 91201

10.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent

with recommended changes and a date by which respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation. In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the

right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling. Data and Document Availability.

10.9.1. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order.

10.9.2. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. The Department shall allow Respondent's employees or consultants to take duplicates of any samples collected by the Department pursuant to this Consent Order or any other sampling done by the Department or any other regulatory agency on Respondent's premises. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent

for a minimum of three years after the conclusion of all activities under this Consent Order.

10.9.3: If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with, that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.2, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order. Nothing in this agreement shall be interpreted to relieve the State of California from any liability, to which it is otherwise subject as a matter of law, for the negligence or gross negligence of its employees.

10.1 1. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the

Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11 .I. Respondent shall pay the Department a total penalty of \$28,100, which includes \$10,832 as reimbursement of the Department's costs.

11.2. The penalty shall be reduced by \$5,000 if, and only if, Respondent sends at least one employee to the California Compliance School, Modules I - V, and submits to the Department, within 180 days of the effective date of this Consent Order, a Certificate of Satisfactory Completion thereof.

11.3. \$23,100 of the above penalty is due and payable within thirty days of the effective date of this Consent Order.

11.4. In the event that the above Certificates of Satisfactory Completion are not all received by the Department within 180 days of the effective date of this Consent Order, the entire remaining balance of \$5,000 shall then become due and payable.

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11.5. Respondent's check shall .be made payable to Department of Toxic Substances Control, and shall be delivered together with, the attached Payment

Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P.O. BOX 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Mukul Agarwal, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

11.6. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 , and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

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12.2. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, a& assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.3. Effective Date. The effective date of this Consent Order is the date it is signed by the Department.

12.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: February 6, 2004

Original signed by Don Sharrow

Signature of Respondent's Representative

Don Sharrow, President

Typed or Printed Name and Title of Respondents Representative

Dated: February 16, 2004

Original signed by Muklu Agarwal

Mukul Agarwal, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control